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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,157	07/21/2003	Alfred Thomas	47079-00221	7702
70243	7590	08/06/2007		
NIXON PEABODY LLP 161 N CLARK ST. 48TH FLOOR CHICAGO, IL 60601-3213			EXAMINER NGUYEN, DAT	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 08/06/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/624,157

Applicant(s)

THOMAS ET AL.

Examiner

Dat T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-12 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-12 and 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/24/2007 has been entered.

### ***Response to Amendment***

This office action is responsive to the amendments filed on 05/24/2007 in which applicant amends claims 1, 2 and 10-12, cancels claims 3, 4, 13 and 14, adds new claim 21 and responds to claim rejections. Claims 1, 2, 5-12 and 15-21 are pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite the selected game outcome

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being independent of the position of the flat panel display. The examiner is unable to find support for such limitations in the instant specification. The most pertinent passage can be found on paragraph [0008] which recites "the mobile FPD can be utilized as a game marker, as a pointer, or simply as a visual entertainment device that may or may not provide information pertinent to the game outcome." The examiner believes that the above passage is insufficient support for the limitation of the game outcome being independent of the display position. Furthermore throughout the specification, it states that "the video images may correlate to the FPD's location, game play (including game outcomes), and further may depend on the combination of the FPD's location and game play," [0009]. Therefore, it is considered that the limitation of the independent game outcome relative to the position is new mater. If applicant disagrees, the examiner invites applicant to cite wherein the instant specification support for the independent outcome relative to the display position may be found.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 2, 5-12 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seelig et al. (US 6,758,473 B2) in view of Driscoll et al. (US 6,496,235).

The rejection as stated in the office action dated 01/17/2007 is maintained and incorporated herein.

Further regarding claim 1 and 10, the device taught by Seelig certainly comprises a central processing unit that is capable of performing the claimed task of determining a random selected game outcome, the randomly selected game outcome determining the video image selected by the central processing unit, the selected game outcome being independent of the position of the flat panel display.

Regarding claim 21, Seelig teaches a gaming machine comprising:

A wager input device (28) for receiving a wager to play a wagering game on the gaming machine;

A drive mechanism (54 and 52);

A controller for controlling the drive mechanism to position the flat panel display along a translational path according to the random selected game outcome (7:10-34). Seelig fails to teach a flat panel display, associated memory, and controller for providing functionality to the moving flat panel display by displaying stored images. In a related patent as discussed previously, Driscoll teaches a gaming machine with an LCD that slides over a background and particularly along an elongated, vertical object (fig 2, feature 8) the computer inside the LCD unit keeps track of the frame's position so that it will know the current status of the colored background (2:40). Therefore it would have

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been obvious to one of ordinary skill in the art at the time of applicant's invention to include the moving LCD with associated memory and controller of Driscoll in place of the moving tiki of Seelig to increase player interest and excitement with the game as a moving LCD with varying display of images would attract more player interest and increase player excitement as compared to the simple tiki display. For further discussion of the Driscoll, please refer to the previous rejection.

Further regarding the randomly selected outcome, the game of Seelig is a game of chance and therefore all outcomes are randomly selected outcomes. During the play of the game of Seelig when a bonus condition occurs, the position is to be moved and therefore the display of the flat panel is to be changed accordingly as well in the combination of Seelig in view of Driscoll.

### ***Response to Arguments***

Applicant's arguments filed 05/24/2007 have been fully considered but they are not persuasive.

Upon closer inspection of the claims and prior art, the examiner regrettably must withhold the current rejection using the current prior art. More specifically, the issue at hand is the 112, first paragraph, rejection of the independent claims.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dat T. Nguyen whose telephone number is (571) 272-2178. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dat Nguyen

  
ROBERT E. PEZZUTO  
SUPERVISORY PRIMARY EXAMINER